

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 6 2003

CATHY A. CATTERSON

U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellant,

v.

LUIS ENRIQUE PAZ-MIRALDA,

Defendant - Appellee.

No. 02-30119

D.C. No. CR-01-00286-KI

MEMORANDUM*

Appeal from the United States District Court
for the District of Oregon
Garr M. King, District Judge, Presiding

Argued and Submitted January 10, 2003
Seattle, Washington

Before: WALLACE, TROTT and TASHIMA, Circuit Judges.

The government appeals from a sentence imposed on Paz-Miralda with an enhancement of four rather than eight levels. The question before us is whether simple possession of a controlled substance under WASH. REV. CODE §

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

69.50.401(d) is an aggravated felony under the 2001 revisions of U.S.S.G. § 2L1.2(b)(1)(C). The district court had jurisdiction pursuant to 18 U.S.C. § 3231, and we have jurisdiction over the timely appeal under 28 U.S.C. § 1291 and 18 U.S.C. § 3742(b). The district court's conclusion that drug possession is not an aggravated felony under U.S.S.G. § 2L1.2(b)(1)(C) is reviewed de novo. *United States v. Arellano-Torres*, 303 F.3d 1173, 1176 (9th Cir. 2002).

In 1997, Paz-Miralda was convicted of felony drug possession of cocaine under WASH. REV. CODE § 69.50.401(d). This is an “aggravated felony” under the 2001 amendments to U.S.S.G. § 2L1.2(b)(1)(C) because it is a felony under state law, *United States v. Ibarra-Galindo*, 206 F.3d 1337, 1338 (9th Cir. 2000), and is punishable under the federal Controlled Substances Act. *Id.* at 1340 n.1, 1341; 21 U.S.C. § 844(a). *United States v. Soberanes*, --- F.3d ----, No. 02-10483, 2003 WL 262218 (9th Cir. Feb. 10, 2003) (holding the *Ibarra-Galindo* framework applies to the 2001 revisions to § 2L1.2(b)(1)(C)).

SENTENCE VACATED and REMANDED.